IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5945 OF 2004

Dudhganga Vedganga Sahakari
Sakhar Karkhana Ltd. ... Petitioner

V/s.

Shri Chhatrapati Shahu Sakhar
Kamgar Sangh & Anr. ... Respondents

Mr.M.S. Topkar for Petitioner
Mr.P.P. Chavan for Respondents
Mr.K.S. Bapat for Respondent No.2

a/w
WRIT PETITION NO.6210 OF 2004

Shri Chhatrapati Shahu Sakhar
Kamgar Sangh ... Petitioner

V/s.

Dudhganga Vedganga Sahakari
Sakhar Karkhana Ltd. & anr. ... Respondents

Mr.P.P. Chavan for Petitioner
Mr.M.S. Topkar for Respondent No.1
Mr.K.S. Bapat for Respondent No.2

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 2, 2004**

P.C.:

. Leave to amend Writ Petition No.6210 of 2004 to add Page 45A.

2. Both these Writ Petitions challenge the same order dated 22.4.2004 passed by the Industrial Court, Kolhapur. The order is an interim order rejecting the

application filed by the representative union to transpose its name as a complainant and the application of the Karkhana; the Petitioner in Writ Petition No.5945 of 2004, for dismissal of the complaint as not maintainable. The case of the employee, who is the complainant in complaint (ULP) No.323 of 2003 and the respondent in both these writ petitions, is that he has not been made permanent despite others who are similarly situated being made permanent and therefore, Item 5 under Schedule IV of the MRTU & PULP Act is attracted. He has also alleged that the settlement which is applicable to the employees was not being implemented and therefore, Item 9 is attracted.

3. The complainant has stated in paragraphs 10 and 18 of the complaint that an unfair labour practice has been committed by the Karkhana by not making him permanent with the sole objective of depriving him of the status and privileges of permanency thereby indulging in an unfair labour practice under Item 6 of Schedule IV of the MRTU & PULP Act. An application has been filed by him stating that he does not wish to press the complaint under Items 2 and 6 of Schedule IV of the MRTU & PULP Act.

4. The Industrial Court has taken the view that since such an application has been filed by the

complainant, the representative union has no right to appear by transposing itself as the complainant. The objection raised by the Karkhana regarding maintainability of the Complaint has also been negatived.

5. The judgment of the Apex Court in **Shramik Utkarsh Sabha v/s. Raymond Woollen Mills Ltd. & Ors., 1995 I CLR 607** does not prohibit an employee from appearing in a proceeding other than that which is filed under Items 2 and 6 of Schedule IV of the MRTU & PULP Act. This Court in the case of **Bhajirao Rajaram Patil v/s. Maharashtra State Co-operative Bank Ltd. & Anr., 1996 II CLR 1137**, has also held that an individual employee has a right to agitate his grievance regarding transfer. Therefore, I see no reason to differ from the findings of the Industrial Court that the complaint is maintainable with respect to Items 5 and 9 of Schedule IV of the Act and that there is no need to transpose the representative union as complainant in place of the employee.

6. The complainant, however, will file an application before the Industrial Court within two weeks from today seeking deletion of the pleadings in respect of Items 2 and 6 of Schedule IV of the MRTU & PULP Act. This application will obviously have to be allowed by

the Industrial Court. The Industrial Court while disposing of the complaint will bear in mind that the complaint relates to all Items except Items 2 and 6 of Schedule IV of the MRTU & PULP Act and any pleadings in respect of those unfair labour practices need not be considered unless of course the pleadings overlap in some instances.

7. Writ Petitions are disposed of accordingly.

8. Parties be provided an authenticated copy of this order.